

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 243**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 \_\_\_\_\_  
7 [Originating in the Committee on Economic Development;  
8 reported February 15, 2011.]  
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10  
11 A BILL to amend and reenact §11-13J-4a, §11-13J-6, §11-13J-8 and  
12 §11-13J-12 of the Code of West Virginia, 1931, as amended, all  
13 relating to the Neighborhood Investment Program Act;  
14 specifying that board members who are affiliated, directly or  
15 indirectly, with an applicant may not discuss or vote on the  
16 applicant's proposal; increasing total maximum aggregate tax  
17 credits certified in any state fiscal year; specifying total  
18 maximum aggregate tax credits allowed in any state fiscal  
19 year; extending the date for termination of the Neighborhood  
20 Investment Program; and providing technical and clerical  
21 cleanup.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §11-13J-4a, §11-13J-6, §11-13J-8 and §11-13J-12 of the  
24 Code of West Virginia, 1931, as amended, be amended and reenacted,

1 all to read as follows:

2 **ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.**

3 **§11-13J-4a. Neighborhood investment program advisory board.**

4 (a) There is hereby created a neighborhood investment program  
5 advisory board, which shall consist of twelve voting members and  
6 the chairperson.

7 (b) *Chairperson.* --

8 (1) The Director of the West Virginia Development Office, or  
9 the designee of the Director of the West Virginia Development  
10 Office, shall be the ex officio chairperson of the neighborhood  
11 investment program advisory board.

12 (2) The chairperson shall vote on actions of the board only in  
13 the event of a tie vote, in which case the chairperson's vote shall  
14 be the deciding vote.

15 (c) *Board members.* --

16 (1) Four members shall be officers or members of the boards of  
17 directors of unrelated corporations which are not affiliated with  
18 one another and which are currently licensed to do business in West  
19 Virginia.

20 (2) Four members shall be executive directors, officers or  
21 members of the boards of directors of unrelated not-for-profit  
22 organizations which are not affiliated with one another which  
23 currently hold charitable organization status under Section  
24 501(c)(3) of the Internal Revenue Code and which are currently

1 licensed to do business in West Virginia.

2       (3) Four members shall be economically disadvantaged citizens  
3 of the state that, for the taxable year immediately preceding the  
4 year of appointment to the board, had an annual gross personal  
5 income that was not more than one hundred twenty-five percent of  
6 the federal designated poverty level for personal incomes, and who  
7 has been a domiciliary and resident of this state for at least one  
8 year at the time of appointment.

9       A member appointed under this subdivision is not disqualified  
10 from completion of his or her term if his or her income in the year  
11 of appointment or in any year subsequent to the year of appointment  
12 exceeds one hundred twenty-five percent of the federal designated  
13 poverty level. A member shall not be eligible for reappointment  
14 under this subdivision unless he or she meets the original  
15 qualifications for appointment: *Provided*, That such member may be  
16 reappointed pursuant to qualification under subdivision (1) or (2)  
17 of this subsection if the member meets the requirements of  
18 subdivision (1) or (2), respectively.

19       (d) *Limitations; terms of members; appointments.* --

20       (1) Not more than four members, exclusive of the chairperson,  
21 shall be appointed from any one congressional district. Not more  
22 than seven of the members, exclusive of the chairperson, may belong  
23 to the same political party. Members shall be eligible for  
24 reappointment. However, no member may serve for more than three

1 consecutive terms.

2       (2) *Appointment terms.* --

3       (A) Except for initial appointments described under  
4 subdivision (3) of this subsection, and except for midterm special  
5 appointments made to fill irregular vacancies on the board, members  
6 shall be appointed for terms of three years each.

7       (B) Except for midterm special appointments made to fill  
8 irregular vacancies on the board, appointment terms shall begin on  
9 July 1, of the beginning year. All appointment terms, special and  
10 regular, shall end on June 30 of the ending year.

11       (3) *Selection of members.* --

12       (A) For the initial appointment of members under this  
13 subdivision, members shall be selected by the Director of the West  
14 Virginia Development Office.

15       (B) At the end of a member's term, the chairperson shall  
16 solicit new member nominations from the board and appoint the most  
17 appropriate person to serve, in compliance with the requirements  
18 set forth in this section.

19       (C) Vacancies on the board shall be filled in the same manner  
20 as the original appointments for the duration of the unexpired  
21 term.

22       (e) *Quorum; meetings; funding.* --

23       (1) The presence of a majority of the members of the board  
24 constitutes a quorum for the transaction of business. The board

1 shall elect from among its members a vice chairperson and such  
2 other officers as are necessary.

3 (2) The board shall meet not less than four times during the  
4 fiscal year, and additional meetings may be held upon a call of the  
5 chairperson or of a majority of the members: *Provided*, That no  
6 meeting of the board shall be required if the total amount of tax  
7 credits available for the fiscal year have been allotted.

8 (3) Board members shall be reimbursed by the West Virginia  
9 Development Office for sums necessary to carry out responsibilities  
10 of the board and for reasonable travel expenses to attend board  
11 meetings.

12 (f) *Annual report*. -- The board shall make a report to the  
13 Governor and the Legislature within thirty days of the close of  
14 each fiscal year. The report shall include summaries of all  
15 meetings of the board, an analysis of the overall progress of the  
16 program, fiscal concerns, the relative impact the program is having  
17 on the state and any suggestions and policy recommendations that  
18 the board may have. The report shall be public information made  
19 available to the general public for examination and copying. The  
20 board is authorized to publish the annual report, should the board  
21 elect to do so.

22 (g) *Duties of the board*. --

23 (1) *Administrative duties*. -- The board shall be responsible  
24 for advising the West Virginia Development Office concerning the

1 administrative obligations of the program.

2       (2) *Project evaluation and approval; prohibition on project*  
3 *promotion.* --

4       (A) The board shall select and approve projects, which may  
5 then be certified by the director of the West Virginia Development  
6 Office pursuant to section four of this article.

7       (B) Only projects sponsored by qualified charitable  
8 organizations, as defined in section three of this article, may be  
9 approved by the board or certified by the Director of the West  
10 Virginia Development Office. An applicant that does not hold  
11 current status as a charitable organization under Section 501(c)(3)  
12 of the Internal Revenue Code may not receive project approval from  
13 the board, or project certification from the Director of the West  
14 Virginia Development Office, for any proposed project. Failure of  
15 any applicant to provide convincing documentation proving such  
16 status as a charitable organization under Section 501(c)(3) of the  
17 Internal Revenue Code shall result in automatic denial of project  
18 approval and denial of project certification under this article.

19       (3) *Criteria for evaluation.* -- In evaluating projects for  
20 approval, the board shall give priority to projects based upon the  
21 following criteria. A proposed project shall be favored if:

22       (A) The project is community based. A project is community  
23 based if:

24       (i) The project is to be managed locally, without national,

1 state, multistate or international affiliations;

2 (ii) The project will benefit local citizens in the immediate  
3 geographic area where the project is to operate; and

4 (iii) The sponsor of the project is a local entity, rather  
5 than a statewide, national or international organization or an  
6 affiliate of a statewide, national or international organization.

7 (B) The proposed project will primarily serve low income  
8 persons.

9 (C) The proposed project will serve highly distressed  
10 neighborhoods or communities.

11 (D) The project plan incorporates collaborative partnerships  
12 among nonprofit groups, businesses, government organizations and  
13 other community organizations.

14 (E) The applicant or sponsor of the project has demonstrated  
15 a proven capacity to deliver the proposed services.

16 (F) The applicant or sponsor of the project historically  
17 maintains low administrative costs.

18 (G) The applicant produces a strong showing of need for the  
19 services which the proposed project would provide, and produces  
20 convincing documentation of that need.

21 (H) The proposed project is innovative, novel, creative or  
22 unique in program approach.

23 (4) ~~In the event that~~ If an applicant is directly or  
24 indirectly affiliated with one or more board members, those members

1 ~~may~~ shall not discuss the proposals with ~~the~~ one or more board  
2 members, ~~but may~~ and shall not have a vote when that project is  
3 considered for final approval or disapproval.

4 (5) *Project approval by the board.* -- Proposed projects shall  
5 be approved or denied approval by a majority vote of the board  
6 after competitive comparison with proposed projects of other  
7 applicants.

8 (h) *Project certification by the Director of the West Virginia*  
9 *Development Office.* --

10 (1) Upon issuance of approval for a project by the board, the  
11 approved project shall be certified by the Director of the West  
12 Virginia Development Office: *Provided*, That no certification may  
13 issue for any project, even though the project may have been  
14 approved by the board, if the issuance of certification for such  
15 project will cause the aggregate amount of tax credits certified to  
16 exceed the limitation set forth in this article. No certification  
17 may be issued by the Director of the West Virginia Development  
18 Office for any project which has not been approved by the board.

19 (2) The West Virginia Development Office shall promptly notify  
20 applicants of the issuance of certification for their projects, and  
21 shall issue tax credit vouchers to certified project applicants in  
22 the amount of the tax credit represented by the project.

23 (3) The West Virginia Development Office may provide  
24 incidental technical support and guidance to projects certified



1 under this article and may monitor the progress of the projects.  
2 The West Virginia Development Office shall make a quarterly report  
3 to the board on the progress of certified projects and the program  
4 generally.

5 **§11-13J-6. Application of annual credit allowance.**

6 (a) *In general.* -- The aggregate annual credit allowance for  
7 a current tax year is an amount equal to the sum of the following:

8 (1) The portion allowed under section five of this article for  
9 an eligible contribution placed into service or use during a prior  
10 tax year; plus

11 (2) The portion allowed under section five of this article for  
12 an eligible contribution placed into service or use during the  
13 current tax year.

14 (b) *Application of credit allowance.* -- The amount determined  
15 under subsection (a) of this section shall be allowed as a credit  
16 for tax years ending on and after July 1, 1996, as follows:

17 (1) *Business franchise taxes.* --

18 The amount determined under subsection (a) of this section  
19 shall be applied to reduce up to fifty percent of the taxes imposed  
20 by article twenty-three of this chapter for the tax year ~~as~~  
21 determined after application of the credits against tax provided in  
22 section seventeen of said article, but before application of any  
23 other allowable credits against tax.

24 (2) *Corporation net income taxes.* -- After application of

1 subdivision (1) of this subsection, any unused credit shall next be  
2 applied to reduce up to fifty percent of the taxes imposed by  
3 article twenty-four of this chapter, for the tax year determined  
4 before application of allowable credits against tax.

5 (3) *Personal income taxes.* --

6 (A) If the eligible taxpayer is an electing small business  
7 corporation as defined in Section 1361 of the United States  
8 Internal Revenue Code, a limited liability company treated as a  
9 partnership for purposes of the federal income tax, a partnership  
10 or a sole proprietorship, then any unused credit, after application  
11 of subdivisions (1) and (2) of this subsection, shall be allowed as  
12 a credit against up to fifty percent of the taxes imposed by  
13 article twenty-one of this chapter on income of proprietors,  
14 partners or shareholders, subject to the limitations set forth in  
15 paragraphs (B) and (C) of this subdivision.

16 (B) Electing small business corporations, partnerships and  
17 other unincorporated organizations shall allocate the credit  
18 allowed by this article among the members thereof in the same  
19 manner as profits and losses are allocated for the tax year.

20 (C) Any taxpayer subject to the personal income tax under  
21 article twenty-one of this chapter, who makes an eligible  
22 contribution to a qualified charitable organization, and receives  
23 back from that organization a properly completed neighborhood  
24 investment program tax credit voucher, is eligible to claim the

1 credit. The credit shall be allowed without regard to the source  
2 of that income, whether it is from wages, passive investment or  
3 retirement income, income from a trade or business or any other  
4 source.

5 (c) *Unused credit forfeited.* -- If any credit to an eligible  
6 taxpayer remains after application of subsections (a) and (b) of  
7 this section, the amount thereof may be carried forward no more  
8 than four years from the tax year in which the contribution was  
9 made. Unused credits of an eligible taxpayer may not be carried  
10 forward beyond the time limits imposed under section five of this  
11 article and the total maximum aggregate tax credits certified in  
12 any state fiscal year may not exceed ~~\$2,000,000~~ \$3,000,000.

13 (d) *Addition of deductions, decreasing adjustments or*  
14 *decreasing modifications taken in determining taxable income for*  
15 *which credit is taken.* -- Any deduction, decreasing adjustment or  
16 decreasing modification taken by any taxpayer in determining  
17 federal taxable income which affects West Virginia taxable income  
18 or in determining West Virginia taxable income under article  
19 twenty-one or twenty-four of this chapter for the taxable year for  
20 any charitable contribution, or payment or portion thereof, which  
21 qualifies as an eligible contribution under this article and for  
22 which credit is claimed, shall be added to West Virginia taxable  
23 income in determining the tax liability of the taxpayer under  
24 article twenty-one or twenty-four of this chapter, as appropriate,

1 before application of the credit allowed under this article for the  
2 taxable year.

3 (e) *Annual limit.* -- The aggregate annual credit allowance to  
4 any taxpayer may not exceed \$100,000 in any tax year.

5 **§11-13J-8. Total maximum aggregate tax credit amount.**

6 (a) The amount of tax credits allowed under this article may  
7 not exceed ~~two million five hundred thousand dollars~~ \$3,000,000 in  
8 any state fiscal year.

9 (b) Applications for project certification shall be filed with  
10 the West Virginia Development Office. The West Virginia  
11 Development Office shall record the date each application is filed.  
12 All complete and valid applications shall be considered for  
13 approval or disapproval in a timely manner by the neighborhood  
14 assistance advisory board. The board may, in its discretion,  
15 consider applications for approval or disapproval at special or  
16 interim meetings for expedited processing.

17 (c) When the total amount of tax credits certified under this  
18 article equals the maximum amount of tax credits allowed, as  
19 specified in subsection (a) of this section, in any state fiscal  
20 year, no further certifications shall be issued in that same fiscal  
21 year. Upon approval of a project by the board, the Director of the  
22 West Virginia Development Office shall certify the approved project  
23 unless certification is prohibited by the limitations and  
24 requirements set forth in this article.

1 (d) All applications filed in any state fiscal year and not  
2 certified during the state fiscal year in which they are filed  
3 shall be null and void by operation of law on the last day of the  
4 state fiscal year in which they are filed, and all applicants which  
5 elect to seek certification of a project plan shall file anew on  
6 and after the first day of the succeeding state fiscal year.

7 **§11-13J-12. Program evaluation; expiration of credit;**  
8 **preservation of entitlement.**

9 Beginning on December 15, 2005, and every second year  
10 thereafter, the director shall secure an independent review of the  
11 neighborhood investment program created by this article and present  
12 the findings to the Joint Committee on Government and Finance.  
13 Unless sooner terminated by law, the Neighborhood Investment  
14 Program Act terminates on ~~July 1, 2011~~ July 1, 2016. There is no  
15 entitlement to the tax credit under this article for a contribution  
16 made to a certified project after ~~July 1, 2011~~ July 1, 2016, and no  
17 credit is available to any taxpayer for any contribution made after  
18 that date. Taxpayers which have gained entitlement to the credit  
19 pursuant to eligible contributions made to certified projects prior  
20 to ~~July 1, 2011~~ July 1, 2016, shall retain that entitlement and  
21 apply the credit in due course pursuant to the requirements and  
22 limitations of this article.

(NOTE: The purpose of this bill is to change the termination date for the Neighborhood Investment Program from July 1, 2011, to July 1, 2016; to prevent board members affiliated with applicants from discussing or voting on proposals put forth by those applicants; to increase the amount of total aggregate tax credit certified each year from \$2 million to \$3 million; and to increase the amount of total aggregate tax credit allowed each year from \$2.5 million to \$3 million.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)